

Remarks

With claims 143 and 144 being cancelled, claims 121-142 and 145-149 remain in the application. Claim 121 is the only independent claim.

The invention is a positive air pressure (PAP) machine for not only treating apneas but also for determining a heart failure indicator from the flow measurement that is part of the PAP machine. Instead of providing a special sensor for deriving the value of some characteristic that is indicative of the extent of heart failure, flow measurements that are available from the PAP machine are used.

Claim 121 was rejected as being anticipated by Estes Patent No. 5,794,615. While this patent explains how PAP therapy can be applied to treat congestive heart failure, it does not discuss how to go about actually determining the heart condition. (Cheyne-Stokes is not even mentioned.) Applied pressure changes are a function of flow measurements, but there is nothing comparable to a measure of heart failure.

The Estes patent and Cho et al Publication No. 2004/0134496 were used together in the rejection of the other claims. But Cho et al does not make up for what is missing in Estes. Cho et al provides a special sensor for sensing a characteristic from which a heart condition can be determined. It does not use the flow measurement available from a PAP machine to do this, as explicitly defined in claim 121.

The Examiner says that paragraph [0005] of Cho et al teaches that "changes in air flow are known to be used to determine various conditions of the patient." But that paragraph is talking about the diagnosis of sleep apnea and

other sleep-related disordered breathing, not heart failure. The Examiner further argues that Cho et al paragraph [0007] teach that its method can be practiced by using a breathing mask instead of an implantable sensor. But that paragraph is still talking about doing this in a study of a patient's sleep apnea or other sleep-related disordered breathing.

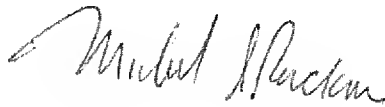
The claims now on file have been amended in several respects for the sake of clarity, and the only independent claim has been amended to clearly distinguish over the cited references. It is believed that the claims remaining in the application are clearly distinguished from the references, and the early passage to issue of the application is respectfully requested.

Respectfully submitted

Gottlieb, Rackman & Reisman, P.C.

Dated: February 12, 2009

By: _____



Michael I. Rackman
Attorney for Applicants
Registration No. 20,639